

**Illinois Department of Revenue
Regulations**

Title 86 Part 660 Section 660.35 Claims for Credit

TITLE 86: REVENUE

**PART 660
TOBACCO PRODUCTS TAX ACT OF 1995**

Section 660.35 Claims for Credit

- a) If it appears, after claim therefor filed with the Department, that an amount of tax or penalty has been paid that was not due under the Act, whether as the result of a mistake of fact or an error of law, except as hereinafter provided, then the Department shall issue a credit memorandum or refund to the person who made the erroneous payment or, if that person has died or become incompetent, to his legal representative, as such.
- b) If it is determined that the Department should issue a credit or refund under the Act, the Department may first apply the amount thereof against any amount of tax or penalty due under the Act from the person entitled to such credit or refund. For this purpose, if proceedings are pending to determine whether any tax or penalty is due under the Act from such person, the Department may withhold issuance of the credit or refund pending the final disposition of such proceedings and may apply such credit or refund against any amount found to be due to the Department under the Act as a result of such proceedings. The balance, if any, of the credit or refund shall be issued to the person entitled thereto.
- c) If no tax or penalty is due and no proceeding is pending to determine whether such taxpayer is indebted to the Department for tax or penalty, the credit memorandum or refund shall be issued to the claimant; or (in the case of a credit memorandum) the credit memorandum may be assigned and set over by the lawful holder thereof, subject to reasonable rules of the Department, to any other person who is subject to the Act, and the amount thereof shall be applied by the Department against any tax or penalty due or to become due under the Act from such assignee.
- d) As to any claim filed hereunder with the Department on and after each January 1 and July 1, no amount of tax or penalty erroneously paid (either in total or partial liquidation of a tax or penalty under the Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited or refunded.
- e) In case the Department determines that the claimant is entitled to a refund, such refund shall be made only from such appropriation as may be available for that purpose. If it appears unlikely that the amount appropriated would permit everyone having a claim allowed during the period covered by such appropriation to elect to receive a cash refund, the Department will make such refunds only in hardship cases (i.e., in cases in which the claimant cannot use a credit memorandum). The two most likely situations

where this would be the case are the situation in which the claimant has discontinued business and the situation in which the claimant will have a small volume of liability to the Department in the foreseeable future, but receives a large credit memorandum that it therefore might take the claimant a long time to liquidate by using it to pay current taxes. In these instances, the claimant probably would have to sell the credit memorandum at a loss in order to realize anything from it within any reasonable period of time.